

111TH CONGRESS
2D SESSION

S. 3755

To ensure fairness in admiralty and maritime law and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2010

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To ensure fairness in admiralty and maritime law and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Admiralty
5 and Maritime Law Act”.

6 **SEC. 2. AMENDMENTS TO LIMITATION OF SHIPOWNERS’ LI-**
7 **ABILITY ACT OF 1851.**

8 (a) IN GENERAL.—Chapter 305 of title 46, United
9 States Code, is amended as follows:

10 (1) Subsection (a) of section 30505 is amended
11 to read as follows:

1 “(a) IN GENERAL.—Except as provided in section
 2 30506 of this title, the liability of the owner of a vessel
 3 for any claim, debt, or liability described in subsection (b)
 4 shall not exceed the value of the vessel and pending
 5 freight. If the vessel has more than one owner, the propor-
 6 tionate share of the liability of any one owner shall not
 7 exceed that owner’s proportionate interest in the vessel
 8 and pending freight.”.

9 (2) Subsection (c) of section 30505 is amended
 10 to read as follows:

11 “(c) CLAIMS NOT SUBJECT TO LIMITATION.—Sub-
 12 section (a) does not apply—

13 “(1) to a claim for wages;

14 “(2) to a claim for personal injury;

15 “(3) to a claim for wrongful death; or

16 “(4) to a claim relating to oil drilling or explo-
 17 ration or the discharge of oil from a vessel or off-
 18 shore facility, as those terms are defined in section
 19 1001 of the Oil Pollution Act of 1990 (33 U.S.C.
 20 2701).”.

21 (3) By adding at the end of the section:

22 “(d) EXCLUSION.—

23 “(1) EXCLUSION.—Unless the claim involves
 24 the privity or knowledge of the owner, claims for
 25 personal injury or wrongful death are subject to the

1 limitation in subsection (a) if the vessel was a fish-
 2 ing vessel.

3 “(2) FISHING VESSEL DEFINED.—In this sub-
 4 section, the term ‘fishing vessel’ means—

5 “(A) a vessel, boat, ship, or other
 6 watercraft that is used for, equipped to be used
 7 for, or of a type normally used for—

8 “(i) charter fishing (as defined in sec-
 9 tion 3(3) of the Magnuson-Stevens Fishery
 10 Conservation and Management Act (16
 11 U.S.C. 1802(3)));

12 “(ii) commercial fishing (as defined in
 13 section 3(4) of such Act (16 U.S.C. 1802
 14 (4))); or

15 “(iii) aiding or assisting one or more
 16 vessels at sea in the performance of any
 17 activity relating to commercial fishing (as
 18 so defined), including preparation, supply,
 19 storage, refrigeration, transportation, or
 20 processing; but

21 “(B) does not include a passenger vessel
 22 (as defined in section 2101(22)).”.

23 (4) Subsection (c) of section 30511 is amended
 24 to read as follows:

1 “(c) CESSATION OF OTHER ACTIONS.—At the time
 2 that an action has been brought under this section and
 3 the owner has complied with subsection (b), all claims and
 4 proceedings against the owner related to the matter in
 5 question which are subject to limitation under section
 6 30505 shall cease.”.

7 **SEC. 3. ASSESSMENT OF PUNITIVE DAMAGES IN MARITIME**
 8 **LAW.**

9 (a) IN GENERAL.—Chapter 301 of title 46, United
 10 States Code, is amended by adding at the end the fol-
 11 lowing:

12 **“§ 30107. Punitive damages**

13 “Except as otherwise provided in this title, in a civil
 14 action for damages arising out of a maritime tort, punitive
 15 damages may be assessed without regard to the amount
 16 of compensatory damages assessed in the action.”.

17 (b) CLERICAL AMENDMENT.—The table of contents
 18 for chapter 301 of title 46, United States Code, is amend-
 19 ed by adding at the end the following:

“30107. Punitive damages”.

20 **SEC. 4. AMENDMENTS TO THE DEATH ON THE HIGH SEAS**
 21 **ACT.**

22 (a) IN GENERAL.—Chapter 303 of title 46, United
 23 States Code, is amended—

24 (1) in section 30302, by inserting “or law”
 25 after “admiralty”;

1 (2) in section 30303, by inserting “and non-
2 pecuniary loss” after “pecuniary loss”;

3 (3) in section 30303, by striking “sustained by”
4 and all that follows and inserting “sustained, plus a
5 fair compensation for the decedent’s pain and suf-
6 fering. In this section, the term ‘nonpecuniary loss’
7 means the loss of care, comfort, and companion-
8 ship.”;

9 (4) in section 30305, by inserting “or law”
10 after “admiralty”; and

11 (5) in section 30306, by inserting “or law”
12 after “admiralty”.

13 (b) AVIATION ACCIDENTS.—

14 (1) IN GENERAL.—Section 30307 of title 46,
15 United States Code, is amended—

16 (A) by striking subsection (a) and insert-
17 ing the following:

18 “(a) DEFINITIONS.—

19 “(1) COMMERCIAL AVIATION; GENERAL AVIA-
20 TION.—The terms ‘commercial aviation’ and ‘general
21 aviation’ have the same meaning as those terms, re-
22 spectively, as used in subtitle VII of title 49, United
23 States Code.

1 “(2) NONPECUNIARY DAMAGES.—The term
2 ‘nonpecuniary damages’ means damages for loss of
3 care, comfort, and companionship.”;

4 (B) by inserting “or general aviation”
5 after “commercial aviation” in subsections (b)
6 and (c); and

7 (C) by adding at the end thereof the fol-
8 lowing:

9 “(d) PROCEDURE.—Notwithstanding sections 30302,
10 30305, and 30306, an action to which this section applies
11 may be brought in admiralty and may not be brought in
12 law.”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) SECTION HEADING.—Section 30307 of
15 title 46, United States Code, is amended in the
16 heading by striking “**COMMERCIAL AVIA-**
17 **TION**” and by inserting “**AVIATION**”.

18 (B) CLERICAL AMENDMENT.—The table of
19 contents for chapter 303 of title 46, United
20 States Code, is amended by striking the item
21 relating to section 30307 and inserting the fol-
22 lowing:

“30307. Aviation accidents”.

23 (c) APPLICATION TO FISHING VESSELS.—

1 (1) IN GENERAL.—None of the amendments
2 made by this section shall apply with respect to a
3 fishing vessel.

4 (2) FISHING VESSEL DEFINED.—In this sub-
5 section, the term “fishing vessel” means—

6 (A) a vessel, boat, ship, or other watercraft
7 that is used for, equipped to be used for, or of
8 a type normally used for—

9 (i) charter fishing (as defined in sec-
10 tion 3(3) of the Magnuson-Stevens Fishery
11 Conservation and Management Act (16
12 U.S.C. 1802(3)));

13 (ii) commercial fishing (as defined in
14 section 3(4) of such Act (16 U.S.C. 1802
15 (4))); or

16 (iii) aiding or assisting one or more
17 vessels at sea in the performance of any
18 activity relating to commercial fishing (as
19 so defined), including preparation, supply,
20 storage, refrigeration, transportation, or
21 processing; but

22 (B) does not include a passenger vessel (as
23 defined in section 2101(22) of title 46, United
24 States Code).

1 **SEC. 5. IMPROVEMENTS TO RECOVERY UNDER THE JONES**
 2 **ACT.**

3 Section 30104 of title 46, United States Code, is
 4 amended to read as follows:

5 **“§ 30104. Personal injury to or death of seamen**

6 “(a) IN GENERAL.—A seaman injured in the course
 7 of employment or, if the seaman dies from the injury, the
 8 personal representative of the seaman may elect to bring
 9 a civil action at law, with the right of trial by jury, against
 10 the employer. Laws of the United States regulating recov-
 11 ery for personal injury to, or death of, a railway employee
 12 apply to an action under this section.

13 “(b) LOSS OF CARE, COMFORT, AND COMPANION-
 14 SHIP.—In addition to other amounts authorized under
 15 such laws, for any claim relating to oil drilling or explo-
 16 ration or the discharge of oil the recovery for a seaman
 17 who so dies shall include recovery for loss of care, comfort,
 18 and companionship.”.

19 **SEC. 6. EFFECTIVE DATE.**

20 The amendments made by this title shall apply to—

21 (1) causes of action and claims arising after
 22 April 19, 2010; or

23 (2) actions commenced before the date of enact-
 24 ment of this Act that have not been finally adju-
 25 dicated, including appellate review, as of that date.